

## CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1050

**Citations Affected:** IC 22-3.

**Synopsis:** Worker's compensation. Increases the compensation benefits per degree of permanent impairment for worker's compensation and occupational disease. Provides increases to the worker's compensation and occupational disease average weekly wage that is used to calculate benefits and the maximum total benefit. Limits the attorney's fees required to be paid by the employer in connection with a third party action to a percentage of the amount of benefits actually repaid, rather than of the amount of reimbursements. Provides that if the treatment to or travel from the place of treatment for an injury or an occupational disease causes a loss of working time to the employee, the employer shall reimburse the employee for the loss of wages using the basis of the employee's average daily wage. Limits the \$20,000 maximum amount of a bad faith claim to the life of the claim for benefits arising for an injury. Provides that a parent or subsidiary of a corporation or a lessor of employees is the employer for purposes of determining the exclusive remedy under the worker's compensation law. (This conference committee report: (1) made certain changes to the compensation benefits per degree of permanent impairment for worker's compensation and occupational diseases; (2) made certain changes to the worker's compensation and occupational disease average weekly wage that is used to calculate benefits and the maximum total benefit; (3) limited the \$20,000 maximum amount of a bad faith claim to the life of the claim for benefits arising for an injury; (4) limited the attorney's fees required to be paid by the employer in connection with a third party action to a percentage of the amount of benefits actually repaid, rather than of the amount of reimbursements; (6) provided that if the treatment to or travel from the place of treatment for an injury or an occupational disease causes a loss of working time to the employee, the employer shall reimburse the employee for the loss of wages using the basis of the employee's average daily wage; and (7) provided that a parent or subsidiary of a corporation or a lessor of employees be the employer for purposes of determining the exclusive remedy under the worker's compensation law.)

**Effective:** July 1, 2000.

# CONFERENCE COMMITTEE REPORT

**MR. PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1050 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

1       Page 1, between the enacting clause and line 1, begin a new  
2       paragraph and insert:  
3       "SECTION 1. IC 22-3-2-13 IS AMENDED TO READ AS  
4       FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 13. Whenever an injury  
5       or death, for which compensation is payable under chapters 2 through  
6       6 of this article shall have been sustained under circumstances creating  
7       in some other person than the employer and not in the same employ a  
8       legal liability to pay damages in respect thereto, the injured employee,  
9       or his dependents, in case of death, may commence legal proceedings  
10      against the other person to recover damages notwithstanding the  
11      employer's or the employer's compensation insurance carrier's payment  
12      of or liability to pay compensation under chapters 2 through 6 of this  
13      article. In that case, however, if the action against the other person is  
14      brought by the injured employee or his dependents and judgment is  
15      obtained and paid, and accepted or settlement is made with the other  
16      person, either with or without suit, then from the amount received by  
17      the employee or dependents there shall be paid to the employer or the  
18      employer's compensation insurance carrier, subject to its paying its  
19      pro-rata share of the reasonable and necessary costs and expenses of  
20      asserting the third party claim, the amount of compensation paid to the  
21      employee or dependents, plus the medical, surgical, hospital and  
22      nurses' services and supplies and burial expenses paid by the employer  
23      or the employer's compensation insurance carrier and the liability of the  
24      employer or the employer's compensation insurance carrier to pay  
25      further compensation or other expenses shall thereupon terminate,  
26      whether or not one (1) or all of the dependents are entitled to share in  
27      the proceeds of the settlement or recovery and whether or not one (1)

1 or all of the dependents could have maintained the action or claim for  
2 wrongful death.

3 In the event the injured employee or his dependents, not having  
4 received compensation or medical, surgical, hospital or nurses' services  
5 and supplies or death benefits from the employer or the employer's  
6 compensation insurance carrier, shall procure a judgment against the  
7 other party for injury or death, which judgment is paid, or if settlement  
8 is made with the other person either with or without suit, then the  
9 employer or the employer's compensation insurance carrier shall have  
10 no liability for payment of compensation or for payment of medical,  
11 surgical, hospital or nurses' services and supplies or death benefits  
12 whatsoever, whether or not one (1) or all of the dependents are entitled  
13 to share in the proceeds of settlement or recovery and whether or not  
14 one (1) or all of the dependents could have maintained the action or  
15 claim for wrongful death.

16 In the event any injured employee, or in the event of his death, his  
17 dependents, shall procure a final judgment against the other person  
18 other than by agreement, and the judgment is for a lesser sum than the  
19 amount for which the employer or the employer's compensation  
20 insurance carrier is liable for compensation and for medical, surgical,  
21 hospital and nurses' services and supplies, as of the date the judgment  
22 becomes final, then the employee, or in the event of his death, his  
23 dependents, shall have the option of either collecting the judgment and  
24 repaying the employer or the employer's compensation insurance  
25 carrier for compensation previously drawn, if any, and repaying the  
26 employer or the employer's compensation insurance carrier for medical,  
27 surgical, hospital and nurses' services and supplies previously paid, if  
28 any, and of repaying the employer or the employer's compensation  
29 insurance carrier the burial benefits paid, if any, or of assigning all  
30 rights under the judgment to the employer or the employer's  
31 compensation insurance carrier and thereafter receiving all  
32 compensation and medical, surgical, hospital and nurses' services and  
33 supplies, to which the employee or in the event of his death, which his  
34 dependents would be entitled if there had been no action brought  
35 against the other party.

36 If the injured employee or his dependents shall agree to receive  
37 compensation from the employer or the employer's compensation  
38 insurance carrier or to accept from the employer or the employer's  
39 compensation insurance carrier, by loan or otherwise, any payment on  
40 account of the compensation, or institute proceedings to recover the  
41 same, the employer or the employer's compensation insurance carrier  
42 shall have a lien upon any settlement award, judgment or fund out of  
43 which the employee might be compensated from the third party.

44 The employee, or in the event of his death, his dependents, shall  
45 institute legal proceedings against the other person for damages, within  
46 two (2) years after the cause of action accrues. If, after the proceeding  
47 is commenced, it is dismissed, the employer or the employer's  
48 compensation insurance carrier, having paid compensation or having  
49 become liable therefor, may collect in their own name, or in the name  
50 of the injured employee, or, in case of death, in the name of his  
51 dependents, from the other person in whom legal liability for damages

exists, the compensation paid or payable to the injured employee, or his dependents, plus medical, surgical, hospital and nurses' services and supplies, and burial expenses paid by the employer or the employer's compensation insurance carrier or for which they have become liable. The employer or the employer's compensation insurance carrier may commence an action at law for collection against the other person in whom legal liability for damages exists, not later than one (1) year from the date the action so commenced has been dismissed, notwithstanding the provisions of any statute of limitations to the contrary.

If the employee, or, in the event of his death, his dependents, shall fail to institute legal proceedings against the other person for damages within two (2) years after the cause of action accrues, the employer or the employer's compensation insurance carrier, having paid compensation, or having been liable therefor, may collect in their own name or in the name of the injured employee, or in the case of his death, in the name of his dependents, from the other person in whom legal liability for damage exists, the compensation paid or payable to the injured employee, or to his dependents, plus the medical, surgical, hospital and nurses' services and supplies, and burial expenses, paid by them, or for which they have become liable, and the employer or the employer's compensation insurance carrier may commence an action at law for collection against the other person in whom legal liability exists, at any time within one (1) year from the date of the expiration of the two (2) years when the action accrued to the injured employee, or, in the event of his death, to his dependents, notwithstanding the provisions of any statute of limitations to the contrary.

In actions brought by the employee or his dependents, he or they shall, within thirty (30) days after the action is filed, notify the employer or the employer's compensation insurance carrier by personal service or registered mail, of the action and the name of the court in which such suit is brought, filing proof thereof in the action.

The employer or the employer's compensation insurance carrier shall pay its pro rata share of all costs and reasonably necessary expenses in connection with asserting the third party claim, action or suit, including but not limited to cost of depositions and witness fees, and to the attorney at law selected by the employee or his dependents, a fee of twenty-five per cent (25%), if collected without suit, of the amount of benefits ~~which benefits shall consist of the amount of reimbursements,~~ **actually repaid** after the expenses and costs in connection with the third party claim have been deducted therefrom, and a fee of thirty-three and one-third per cent (33 1/3%), if collected with suit, of the amount of benefits **actually repaid** after deduction of costs and reasonably necessary expenses in connection with the third party claim action or suit. The employer may, within ninety (90) days after receipt of notice of suit from the employee or his dependents, join in the action upon his motion so that all orders of court after hearing and judgment shall be made for his protection. An employer or his compensation insurance carrier may waive its right to reimbursement under this section and, as a result of the waiver, not have to pay the pro-rata share of costs and expenses.

No release or settlement of claim for damages by reason of injury or

1 death, and no satisfaction of judgment in the proceedings, shall be valid  
 2 without the written consent of both employer or the employer's  
 3 compensation insurance carrier and employee or his dependents, except  
 4 in the case of the employer or the employer's compensation insurance  
 5 carrier, consent shall not be required where the employer or the  
 6 employer's compensation insurance carrier has been fully indemnified  
 7 or protected by court order.

8 SECTION 2. IC 22-3-3-4 IS AMENDED TO READ AS FOLLOWS  
 9 [EFFECTIVE JULY 1, 2000]: Sec. 4. (a) After an injury and prior to  
 10 an adjudication of permanent impairment, the employer shall furnish  
 11 or cause to be furnished, free of charge to the employee, an attending  
 12 physician for the treatment of his injuries, and in addition thereto such  
 13 surgical, hospital and nursing services and supplies as the attending  
 14 physician or the worker's compensation board may deem necessary. If  
 15 the employee is requested or required by the employer to submit to  
 16 treatment outside the county of employment, the employer shall also  
 17 pay the reasonable expense of travel, food, and lodging necessary  
 18 during the travel, but not to exceed the amount paid at the time of the  
 19 travel by the state to its employees under the state travel policies and  
 20 procedures established by the department of administration and  
 21 approved by the state budget agency. **If the treatment or travel to or**  
 22 **from the place of treatment causes a loss of working time to the**  
 23 **employee, the employer shall reimburse the employee for the loss**  
 24 **of wages using the basis of the employee's average daily wage.**

25 (b) During the period of temporary total disability resulting from the  
 26 injury, the employer shall furnish the physician services, and supplies,  
 27 and the worker's compensation board may, on proper application of  
 28 either party, require that treatment by the physician and services and  
 29 supplies be furnished by or on behalf of the employer as the worker's  
 30 compensation board may deem reasonably necessary.

31 (c) After an employee's injury has been adjudicated by agreement  
 32 or award on the basis of permanent partial impairment and within the  
 33 statutory period for review in such case as provided in section 27 of  
 34 this chapter, the employer may continue to furnish a physician or  
 35 surgeon and other medical services and supplies, and the worker's  
 36 compensation board may within the statutory period for review as  
 37 provided in section 27 of this chapter, on a proper application of either  
 38 party, require that treatment by that physician and other medical  
 39 services and supplies be furnished by and on behalf of the employer as  
 40 the worker's compensation board may deem necessary to limit or  
 41 reduce the amount and extent of the employee's impairment. The  
 42 refusal of the employee to accept such services and supplies, when  
 43 provided by or on behalf of the employer, shall bar the employee from  
 44 all compensation otherwise payable during the period of the refusal,  
 45 and his right to prosecute any proceeding under IC 22-3-2 through  
 46 IC 22-3-6 shall be suspended and abated until the employee's refusal  
 47 ceases. The employee must be served with a notice setting forth the  
 48 consequences of the refusal under this section. The notice must be in  
 49 a form prescribed by the worker's compensation board. No  
 50 compensation for permanent total impairment, permanent partial  
 51 impairment, permanent disfigurement, or death shall be paid or payable

for that part or portion of the impairment, disfigurement, or death which is the result of the failure of the employee to accept the treatment, services, and supplies required under this section. However, an employer may at any time permit an employee to have treatment for his injuries by spiritual means or prayer in lieu of the physician or surgeon and other medical services and supplies required under this section.

(d) If, because of an emergency, or because of the employer's failure to provide an attending physician or surgical, hospital, or nursing services and supplies, or treatment by spiritual means or prayer, as required by this section, or because of any other good reason, a physician other than that provided by the employer treats the injured employee during the period of the employee's temporary total disability, or necessary and proper surgical, hospital, or nursing services and supplies are procured within the period, the reasonable cost of those services and supplies shall, subject to the approval of the worker's compensation board, be paid by the employer.

(e) Regardless of when it occurs, where a compensable injury results in the amputation of a body part, the enucleation of an eye, or the loss of natural teeth, the employer shall furnish an appropriate artificial member, braces, and prosthodontics. The cost of repairs to or replacements for the artificial members, braces, or prosthodontics that result from a compensable injury pursuant to a prior award and are required due to either medical necessity or normal wear and tear, determined according to the employee's individual use, but not abuse, of the artificial member, braces, or prosthodontics, shall be paid from the second injury fund upon order or award of the worker's compensation board. The employee is not required to meet any other requirement for admission to the second injury fund.

(f) If an accident arising out of and in the course of employment after June 30, 1997, results in the loss of or damage to an artificial member, a brace, an implant, eyeglasses, prosthodontics, or other medically prescribed device, the employer shall repair the artificial member, brace, implant, eyeglasses, prosthodontics, or other medically prescribed device or furnish an identical or a reasonably equivalent replacement.

(g) This section may not be construed to prohibit an agreement between an employer and the employer's employees that has the approval of the board and that binds the parties to:

(1) medical care furnished by health care providers selected by agreement before or after injury; or

(2) the findings of a health care provider who was chosen by agreement."

Page 9, line 34, delete "2002" and insert "**2001**".

Page 9, line 35, after "thousand" insert "**one hundred**".

Page 9, line 36, delete "(\$1,000)" and insert "**(\$1,100)**".

Page 9, line 38, delete "two" and insert "**three**".

Page 9, line 38, delete "(\$1, 200)" and insert "**(\$1,300)**".

Page 9, line 39, delete "one" and insert "**two**".

Page 9, line 40, delete "eight hundred".

Page 9, line 40, delete "(\$1,800)" and insert "**(\$2,000)**".

- 1 Page 9, line 42, delete "two" and insert "**five**".
- 2 Page 9, line 42, delete "(\$2,250)" and insert "(\$**2,500**)".
- 3 Page 10, line 2, delete "2002" and insert "**2001**".
- 4 Page 10, line 3, delete "two" and insert "**three**".
- 5 Page 10, line 3, delete "(\$1, 200)" and insert "(\$**1,300**)".
- 6 Page 10, line 5, delete "four" and insert "**five**".
- 7 Page 10, line 6, delete "(\$1,400)" and insert "(\$**1,500**)".
- 8 Page 10, line 7, after "thousand" insert "**four hundred**".
- 9 Page 10, line 8, delete "(\$2,000)" and insert "(\$**2,400**)".
- 10 Page 10, line 9, delete "two" and insert "**three**".
- 11 Page 10, line 9, delete "five hundred".
- 12 Page 10, line 10, delete "(\$2,500)" and insert "(\$**3,000**)".
- 13 Page 10, line 34, delete "and before July 1, 2003".
- 14 Page 10, delete lines 36 through 40.
- 15 Page 14, line 41, after ";" insert "**and**".
- 16 Page 15, line 1, delete ", and before July 1, 2003".
- 17 Page 15, line 4, delete ";" and insert ".".
- 18 Page 15, delete lines 5 through 13.
- 19 Page 18, line 20, delete "and before July 1, 2003".
- 20 Page 18, delete lines 22 through 26.
- 21 Page 18, between lines 26 and 27, begin a new paragraph and insert:
- 22 "SECTION 5. IC 22-3-4-12.1 IS AMENDED TO READ AS
- 23 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 12.1. (a) The worker's
- 24 compensation board, upon hearing a claim for benefits, has the
- 25 exclusive jurisdiction to determine whether the employer, the
- 26 employer's worker's compensation administrator, or the worker's
- 27 compensation insurance carrier has acted with a lack of diligence, in
- 28 bad faith, or has committed an independent tort in adjusting or settling
- 29 the claim for compensation.
- 30 (b) If lack of diligence, bad faith, or an independent tort is proven
- 31 under subsection (a), the award to the claimant shall be at least five
- 32 hundred dollars (\$500), but not more than twenty thousand dollars
- 33 (\$20,000), depending upon the degree of culpability and the actual
- 34 damages sustained.
- 35 (c) An award under this section shall be paid by the employer,
- 36 worker's compensation administrator, or worker's compensation
- 37 insurance carrier responsible to the claimant for the lack of diligence,
- 38 bad faith, or independent tort.
- 39 (d) The worker's compensation board shall fix in addition to any
- 40 award under this section the amount of attorney's fees payable with
- 41 respect to an award made under this section. The attorney's fees may
- 42 not exceed thirty-three and one-third percent (33 1/3%) of the amount
- 43 of the award.
- 44 (e) If the worker's compensation board makes an award under this
- 45 section, it shall reduce the award to writing and forward a copy to the
- 46 department of insurance for review under IC 27-4-1-4.5.
- 47 **(f) An award or awards to a claimant pursuant to subsection (b)**
- 48 **shall not total more than twenty thousand dollars (\$20,000) during**
- 49 **the life of the claim for benefits arising from an accidental injury.**
- 50 SECTION 6. IC 22-3-6-1, AS AMENDED BY P.L.235-1999,
- 51 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2000]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. **A parent or a subsidiary of a corporation or a lessor of employees shall be considered to be the employer of the corporation's, the lessee's, or the lessor's employees for purposes of IC 22-3-2-6.** If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under IC 22-3-2 through IC 22-3-6.

(2) An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an



independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen

1 (17) years of age.

2 (1) Unless otherwise provided in this subsection, a minor  
3 employee shall be considered as being of full age for all purposes  
4 of IC 22-3-2 through IC 22-3-6.

5 (2) If the employee is a minor who, at the time of the accident, is  
6 employed, required, suffered, or permitted to work in violation of  
7 IC 20-8.1-4-25, the amount of compensation and death benefits,  
8 as provided in IC 22-3-2 through IC 22-3-6, shall be double the  
9 amount which would otherwise be recoverable. The insurance  
10 carrier shall be liable on its policy for one-half (1/2) of the  
11 compensation or benefits that may be payable on account of the  
12 injury or death of the minor, and the employer shall be liable for  
13 the other one-half (1/2) of the compensation or benefits. If the  
14 employee is a minor who is not less than sixteen (16) years of age  
15 and who has not reached seventeen (17) years of age and who at  
16 the time of the accident is employed, suffered, or permitted to  
17 work at any occupation which is not prohibited by law, this  
18 subdivision does not apply.

19 (3) A minor employee who, at the time of the accident, is a  
20 student performing services for an employer as part of an  
21 approved program under IC 20-10.1-6-7 shall be considered a  
22 full-time employee for the purpose of computing compensation  
23 for permanent impairment under IC 22-3-3-10. The average  
24 weekly wages for such a student shall be calculated as provided  
25 in subsection (d)(4).

26 (4) The rights and remedies granted in this subsection to a minor  
27 under IC 22-3-2 through IC 22-3-6 on account of personal injury  
28 or death by accident shall exclude all rights and remedies of the  
29 minor, the minor's parents, or the minor's personal  
30 representatives, dependents, or next of kin at common law,  
31 statutory or otherwise, on account of the injury or death. This  
32 subsection does not apply to minors who have reached seventeen  
33 (17) years of age.

34 (d) "Average weekly wages" means the earnings of the injured  
35 employee in the employment in which the employee was working at the  
36 time of the injury during the period of fifty-two (52) weeks  
37 immediately preceding the date of injury, divided by fifty-two (52),  
38 except as follows:

39 (1) If the injured employee lost seven (7) or more calendar days  
40 during this period, although not in the same week, then the  
41 earnings for the remainder of the fifty-two (52) weeks shall be  
42 divided by the number of weeks and parts thereof remaining after  
43 the time lost has been deducted.

44 (2) Where the employment prior to the injury extended over a  
45 period of less than fifty-two (52) weeks, the method of dividing  
46 the earnings during that period by the number of weeks and parts  
47 thereof during which the employee earned wages shall be  
48 followed, if results just and fair to both parties will be obtained.  
49 Where by reason of the shortness of the time during which the  
50 employee has been in the employment of the employee's employer  
51 or of the casual nature or terms of the employment it is

impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 7. IC 22-3-7-9, AS AMENDED BY P.L.235-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. **A parent or a subsidiary of a corporation or a lessor of employees shall be considered to be the employer of the corporation's, the lessee's, or the lessor's employees for purposes of section 6 of this chapter.** The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this chapter. If the employer is insured, the term includes his insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer.

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

(1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes his legal representative, dependents, and other persons to whom compensation may be payable.

(2) An owner of a sole proprietorship may elect to include himself as an employee under this chapter if he is actually engaged in the proprietorship business. If the owner makes this election, he must serve upon his insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-7-34.5.

(3) A partner in a partnership may elect to include himself as an employee under this chapter if he is actually engaged in the partnership business. If a partner makes this election, he must serve upon his insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades

1 and does not make the election provided under this subdivision,  
 2 the partner must obtain an affidavit of exemption under  
 3 IC 22-3-7-34.5.

4 (4) Real estate professionals are not employees under this chapter  
 5 if:

6 (A) they are licensed real estate agents;

7 (B) substantially all their remuneration is directly related to  
 8 sales volume and not the number of hours worked; and

9 (C) they have written agreements with real estate brokers  
 10 stating that they are not to be treated as employees for tax  
 11 purposes.

12 (5) A person is an independent contractor in the construction  
 13 trades and not an employee under this chapter if the person is an  
 14 independent contractor under the guidelines of the United States  
 15 Internal Revenue Service.

16 (6) An owner-operator that provides a motor vehicle and the  
 17 services of a driver under a written contract that is subject to  
 18 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor  
 19 carrier is not an employee of the motor carrier for purposes of this  
 20 chapter. The owner-operator may elect to be covered and have the  
 21 owner-operator's drivers covered under a worker's compensation  
 22 insurance policy or authorized self-insurance that insures the  
 23 motor carrier if the owner-operator pays the premiums as  
 24 requested by the motor carrier. An election by an owner-operator  
 25 under this subdivision does not terminate the independent  
 26 contractor status of the owner-operator for any purpose other than  
 27 the purpose of this subdivision.

28 (7) An unpaid participant under the federal School to Work  
 29 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the  
 30 extent set forth under section 2.5 of this chapter.

31 (c) As used in this chapter, "minor" means an individual who has  
 32 not reached seventeen (17) years of age. A minor employee shall be  
 33 considered as being of full age for all purposes of this chapter.  
 34 However, if the employee is a minor who, at the time of the last  
 35 exposure, is employed, required, suffered, or permitted to work in  
 36 violation of the child labor laws of this state, the amount of  
 37 compensation and death benefits, as provided in this chapter, shall be  
 38 double the amount which would otherwise be recoverable. The  
 39 insurance carrier shall be liable on its policy for one-half (1/2) of the  
 40 compensation or benefits that may be payable on account of the  
 41 disability or death of the minor, and the employer shall be wholly liable  
 42 for the other one-half (1/2) of the compensation or benefits. If the  
 43 employee is a minor who is not less than sixteen (16) years of age and  
 44 who has not reached seventeen (17) years of age, and who at the time  
 45 of the last exposure is employed, suffered, or permitted to work at any  
 46 occupation which is not prohibited by law, the provisions of this  
 47 subsection prescribing double the amount otherwise recoverable do not  
 48 apply. The rights and remedies granted to a minor under this chapter on  
 49 account of disease shall exclude all rights and remedies of the minor,  
 50 his parents, his personal representatives, dependents, or next of kin at  
 51 common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he claims compensation or equal wages in other suitable employment, and "disability" means the state of being so incapacitated.

(f) For the purposes of this chapter, no compensation shall be payable for or on account of any occupational diseases unless disablement, as defined in subsection (e), occurs within two (2) years after the last day of the last exposure to the hazards of the disease except for the following:

(1) In all cases of occupational diseases caused by the inhalation of silica dust or coal dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease.

(2) In all cases of occupational disease caused by the exposure to radiation, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within two (2) years from the date on which the employee had knowledge of the nature of his occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to his employment.

(3) In all cases of occupational diseases caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985.

(4) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1985, and before July 1, 1988, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within twenty (20) years after the last day of the last exposure.

(5) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1988, no compensation shall be payable unless disablement (as defined in subsection (e)) occurs within thirty-five (35) years after the last day of the last exposure.

(g) For the purposes of this chapter, no compensation shall be payable for or on account of death resulting from any occupational

disease unless death occurs within two (2) years after the date of disablement. However, this subsection does not bar compensation for death:

(1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or

(2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products."

Page 28, line 41, delete "injuries" and insert "**disablements**".

Page 28, line 42, delete "2002" and insert "**2001**".

Page 29, line 1, after "thousand" insert "**one hundred**".

- 1 Page 29, line 2, delete "\$1,000" and insert "**(\$1,100)**".
- 2 Page 29, line 4, delete "two" and insert "**three**".
- 3 Page 29, line 4, delete "\$1,200" and insert "**(\$1,300)**".
- 4 Page 29, line 5, delete "one" and insert "**two**".
- 5 Page 29, line 6, delete "eight hundred".
- 6 Page 29, line 6, delete "\$1,800" and insert "**(\$2,000)**".
- 7 Page 29, line 8, delete "two" and insert "**five**".
- 8 Page 29, line 8, delete "\$2,250" and insert "**(\$2,500)**".
- 9 Page 29, line 9, delete "injuries" and insert "**disabilities**".
- 10 Page 29, line 10, delete "2002" and insert "**2001**".
- 11 Page 29, line 11, delete "two" and insert "**three**".
- 12 Page 29, line 11, delete "\$1,200" and insert "**(\$1,300)**".
- 13 Page 29, line 13, delete "four" and insert "**five**".
- 14 Page 29, line 14, delete "\$1,400" and insert "**(\$1,500)**".
- 15 Page 29, line 15, after "thousand" insert "**four hundred**".
- 16 Page 29, line 16, delete "\$2,000" and insert "**(\$2,400)**".
- 17 Page 29, line 17, delete "two" and insert "**three**".
- 18 Page 29, line 17, delete "five hundred".
- 19 Page 29, line 18, delete "\$2,500" and insert "**(\$3,000)**".
- 20 Page 30, line 6, delete "and before July 1, 2003".
- 21 Page 30, delete lines 8 through 12.
- 22 Page 32, between lines 32 and 33, begin a new paragraph and insert:
- 23 "SECTION 9. IC 22-3-7-17 IS AMENDED TO READ AS
- 24 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 17. (a) During the
- 25 period of disablement, the employer shall furnish or cause to be
- 26 furnished, free of charge to the employee, an attending physician for
- 27 the treatment of his occupational disease, and in addition thereto such
- 28 surgical, hospital, and nursing services and supplies as the attending
- 29 physician or the worker's compensation board may deem necessary. If
- 30 the employee is requested or required by the employer to submit to
- 31 treatment outside the county of employment, ~~said~~ **the** employer shall
- 32 also pay the reasonable expense of travel, food, and lodging necessary
- 33 during the travel, but not to exceed the amount paid at the time of ~~said~~
- 34 **the** travel by the state of Indiana to its employees. **If the treatment or**
- 35 **travel to or from the place of treatment causes a loss of working**
- 36 **time to the employee, the employer shall reimburse the employee**
- 37 **for the loss of wages using the basis of the employee's average daily**
- 38 **wage.**
- 39 (b) During the period of disablement resulting from the occupational
- 40 disease, the employer shall furnish such physician, services, and
- 41 supplies, and the worker's compensation board may, on proper
- 42 application of either party, require that treatment by such physician and
- 43 such services and supplies be furnished by or on behalf of the employer
- 44 as the board may deem reasonably necessary. After an employee's
- 45 occupational disease has been adjudicated by agreement or award on
- 46 the basis of permanent partial impairment and within the statutory
- 47 period for review in such case as provided in section 27(i) of this
- 48 chapter, the employer may continue to furnish a physician or a surgeon
- 49 and other medical services and supplies, and the board may, within
- 50 such statutory period for review as provided in section 27(i) of this



chapter, on a proper application of either party, require that treatment by such physician or surgeon and such services and supplies be furnished by and on behalf of the employer as the board may deem necessary to limit or reduce the amount and extent of such impairment. The refusal of the employee to accept such services and supplies when so provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of such refusal and his right to prosecute any proceeding under this chapter shall be suspended and abated until such refusal ceases. The employee must be served with a notice setting forth the consequences of the refusal under this section. The notice must be in a form prescribed by the worker's compensation board. No compensation for permanent total impairment, permanent partial impairment, permanent disfigurement, or death shall be paid or payable for that part or portion of such impairment, disfigurement, or death which is the result of the failure of such employee to accept such treatment, services, and supplies, provided that an employer may at any time permit an employee to have treatment for his disease or injury by spiritual means or prayer in lieu of such physician, services, and supplies.

(c) Regardless of when it occurs, where a compensable occupational disease results in the amputation of a body part, the enucleation of an eye, or the loss of natural teeth, the employer shall furnish an appropriate artificial member, braces, and prosthodontics. The cost of repairs to or replacements for the artificial members, braces, or prosthodontics that result from a compensable occupational disease pursuant to a prior award and are required due to either medical necessity or normal wear and tear, determined according to the employee's individual use, but not abuse, of the artificial member, braces, or prosthodontics, shall be paid from the second injury fund upon order or award of the worker's compensation board. The employee is not required to meet any other requirement for admission to the second injury fund.

(d) If an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital, or nurse's services and supplies or such treatment by spiritual means or prayer as specified in this section, or for other good reason, a physician other than that provided by the employer treats the diseased employee within the period of disability, or necessary and proper surgical, hospital, or nurse's services and supplies are procured within ~~said~~ the period, the reasonable cost of such services and supplies shall, subject to approval of the worker's compensation board, be paid by the employer.

(e) This section may not be construed to prohibit an agreement between an employer and employees that has the approval of the board and that:

- (1) binds the parties to medical care furnished by providers selected by agreement before or after disablement; or
- (2) makes the findings of a provider chosen in this manner binding upon the parties.

(f) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under this section. The right to order payment for all services provided under this

- 1 chapter is solely with the board. All claims by a health care provider for
- 2 payment for services are against the employer and the employer's
- 3 insurance carrier, if any, and must be made with the board under this
- 4 chapter."
- 5 Page 35, line 14, delete "injuries" and insert "**disablements**".
- 6 Page 35, line 18, after ";" insert "**and**".
- 7 Page 35, line 19, delete "injuries" and insert "**disablements**".
- 8 Page 35, line 20, delete ", and before July 1, 2003".
- 9 Page 35, line 23, delete ";" and insert ".".
- 10 Page 35, delete lines 24 through 32.
- 11 Page 37, line 30, delete "an injury" and insert "**disability or death**".
- 12 Page 37, line 33, delete "an injury" and insert "**disability or death**".
- 13 Page 37, line 34, delete "and before July 1, 2003".
- 14 Page 37 delete lines 36 through 40.
- 15 Renumber all SECTIONS consecutively.  
(Reference is to EHB as printed February 18, 2000.)

**Conference Committee Report**  
**on**  
**Engrossed House Bill 1050**

**S**igned by:

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Representative Liggett  
Chairperson

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Senator Harrison

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Representative Torr

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Senator Alexa

**House Conferees**

**Senate Conferees**15